

General Information Letter: Transportation company operating in Illinois has nexus.

April 10, 2002

Dear:

This is in response to your letter dated December 17, 2001, which was referred to Legal Services (Income Tax) April 7, 2002. The nature of your letter and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed at www.Iltax.com.

Your letter states as follows:

We are in the process of updating our nexus requirement checklists. Please provide us with a written response as to whether the following business activity scenarios create nexus (filing requirements) in your state and for what taxes. Please reference or include any applicable statutes or regulations.

For scenario #1 through Scenario #7, assume that the Z Trucking Company has no other business activity in your state (no solicitation, no in-state employees, no in-state property, etc.). All solicitation is conducted via phone from State X.

Scenario #1 – Z Trucking Company

Trucking Co. Z drives through your state on a regular routine basis. Trucking Co. Z does not pick up any loads or deliver any loads to customers in your state. Other than stopping for fuel, Trucking Co. Z has no other activity that occurs in your state.

Scenario #2 – Z Trucking Company

Trucking Co. Z drives through your state on an occasional non-routine basis. Trucking Co. Z does not pick-up any loads or deliver any loads to customers in your state. Other than stopping for fuel, Trucking Co. Z has no other activity that occurs in your state.

Scenario #3 – Z Trucking Company

Trucking Co. Z drives through your state (could be routine or non-routine). Trucking Co. Z does pick-up loads, however makes no delivery of any loads to customers in your state.

Scenario #4 – Z Trucking Company

Trucking Co. Z drives through your state (could be routine or non-routine). Trucking Co. Z does not pick-up any loads, however makes delivery of loads to customers in your state.

Scenario #5 – Z Trucking Company

Trucking Co. Z drives through your state (could be routine or non-routine). Trucking Co. Z does pick-up loads and does make delivery of loads to customers in your state.

Scenario #6 – Z Trucking Company

Trucking Co. Z drives through your state (could be routine or non-routine). Trucking Co. Z does not pick-up any loads or make delivery of any loads to customers in your state. Trucking Co. Z stops for fuel and for non-scheduled truck repairs.

Scenario #7 – Z Trucking Company

Trucking Co. Z drives through your state (could be routine or non-routine). Trucking Co. Z does not pick-up any loads or make delivery of any loads to customers in your state. Trucking Co. Z stops for fuel and for scheduled truck repairs.

Scenario #8 – Z Trucking Company

Would any of the answers provided above change if Trucking Co. Z made minimal routine (1-3 times per year) customer solicitation visits to large customers within your state? All orders for customers would still be taken via phone from State X.

Scenario #9 – Z Trucking Company

Would any of the answers provided above change if Trucking Co. Z made routine (in excess of 2-3) customer solicitation visits to large customers within your state? All orders for the customers would still be taken via phone from State X.

Scenario #10 – Z Trucking Company

Would any of the answers provided above change if Trucking Co. Z attended and participated in Trade Show within your state? All orders for the customers would still be taken via phone from State X.

If any of the above scenarios create a nexus issue for transportation companies, does your state offer an amnesty or voluntary disclosure program? If yes, please provide details.

RULING

I. Nexus

The United States Constitution restricts a state's power to subject to income tax foreign corporations. The due process clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax (*Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the commerce clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state (*Id.*) Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/301-308), Illinois can demonstrate the connection or nexus necessary to subject a foreign corporation to tax. Therefore, unless protected by Public Law 86-272, 15 U.S.C.A. 381, a foreign corporation is liable for Illinois income tax where any portion of its income is allocated to Illinois.

IITA section 304(d) sets forth the manner in which business income from furnishing transportation services must be apportioned to Illinois. With respect to such business income other than that derived from transportation by pipeline, section 304(d)(1) states in part:

Such business income (other than that derived from transportation by pipeline) shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For purposes of this paragraph, a revenue mile is the transportation of 1 passenger or 1 net ton of freight the distance of 1 mile for a consideration.

In Scenarios #1 - #7 of your letter, it is indicated that Trucking Co. Z drives through Illinois. Consequently, a portion of its net income is allocable to Illinois in accordance with the provisions of Article 3 of the IITA. Therefore, Trucking Company Z is liable for Illinois income tax. The additional facts set forth in Scenarios #8-#10 do not change the result.

In general, Public Law 86-272 (15 U.S.C.A. 381 (1959)) prohibits a state from imposing an income tax on a foreign corporation where the business activities of such corporation within the state consist solely of the solicitation of orders for sales of tangible personal property.

The facts included in your letter suggest that Trucking Company Z is engaged in Illinois in the business of providing transportation services. Therefore, Trucking Company Z is not protected by the provisions of Public Law 86-272. See 86 Ill. Adm. Code 100.9720 (enclosed).

II. Filing Requirements

Section 502(a) of the IITA provides in part:

A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

- (1) For which such person is liable for a tax imposed by this Act, or
- (2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this provision, Trucking Company Z must file an Illinois income tax return if it is either (i) liable for Illinois income tax, or (ii) is not so liable but is qualified to business in Illinois and required to file a federal return.

III. Voluntary Disclosure

Section 3-10(c) of the Uniform Penalty and Interest Act ("the UPIA"; 35 ILCS 735/3-10(c)) limits the period of assessment in certain cases where a taxpayer voluntarily discloses its failure to file a tax return. The section states:

In the case of a failure to file a return required by law that is voluntarily disclosed to the Department, in accordance with regulations promulgated by the Department for receiving the voluntary disclosure, the tax may be assessed no more than 4 years after the original due date of each return required to have been filed.

The manner in which a taxpayer makes such disclosure is set forth at 86 Ill. Adm. Code 210.126 (enclosed).

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b). If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our web site at www.Iltax.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

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